

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4516 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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BP JOSHI ASSTT.ADMN. OFFICER

Versus

UNITED INDIA INSURANCE CO LTD

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Appearance:

MR ANAND L SHARMA for Petitioner

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CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 09/11/98

ORAL JUDGEMENT

1. Heard learned counsel for the petitioner. The petitioner was working as Assistant Administrative Officer with the respondent United India Insurance Co. Through this Special Civil Application, he seeks to challenge the order dated 29th August 1997, by which the penalty of removal from services which shall not be a disqualification for future employment has been imposed against him and it has also been ordered that a sum of Rs.83,474/- be recovered from him.

2. The petitioner's challenge to this order is based on the ground that the said order has been passed without holding any inquiry against him. The order dated 29th August 1997, shows that the charge was framed against the petitioner, that, during 1995, while he was assigned the functions of accounts department, he instead of handing over the proposals and the premium collected by him, had retained back the proposals involving a total premium of Rs.83,474/- and had misappropriated the same. Vide his statement dated 5/9/95, he admitted the factum of misappropriation. The petitioner was subjected to chargesheet dated 16/5/97 with the memorandum on 28th May 1997, he sought time to file the reply vide his letter dated 4th June 1997 and thereafter, submitted the reply dated 12th June 1997 and in this reply, he unconditionally admitted the charge. In view of the unconditional admission of the charge, the requirement of holding the inquiry was obviated and the disciplinary authority in exercise of the powers conferred on him under Rule 23(g) of General Insurance (Conduct, Disciplinary & Appeal) Rules, 1975, imposed the penalty as aforesaid. Against this order dated 29th August 1997, the petitioner preferred appeal before the appellate authority and during the course of arguments, learned counsel for the petitioner has produced a copy of the order dated 5th May 1998 passed by the appellate authority whereby the appeal has been rejected and by moving a draft amendment, the petitioner also seeks to amend the petition incorporating the challenge to the order passed by the appellate authority on 5th May 1998 which was communicated to him vide covering letter dated 30th June 1998. Learned counsel for the petitioner has pointed out that this order dated 5th May 1998 was conveyed to him after the filing of the present Special Civil Application and therefore, he could not incorporate the challenge to the order passed by the appellate authority in this petition which had been filed by him on 15th June 1998. The amendment as prayed for is therefore allowed. The appellate order dated 5/5/1998 alongwith the covering letter dated 30/6/1998 produced on behalf of the petitioner with the draft amendment shall be included in the record.

3. Learned counsel for the petitioner has been heard on the challenge to the order dated 29th August 1997 passed by the disciplinary authority, as also the order dated 5th May 1998 passed by the appellate authority. It is clearly discernible from the two impugned orders that the petitioner has been visited with the punishment without holding inquiry, not only because of his

admission vide his statement dated 5/9/95, but on the basis that when the memorandum proposing inquiry into the chargesheet dated 16th May 1997 was served upon him, he after seeking time to file a reply to this charge sheet, himself filed the reply dated 12th June 1997 and in this reply he admitted the charges unconditionally. Rule 23 (4) of the General Insurance (Conduct, Disciplinary & Appeal) Rules, 1975 provides that it may not be necessary to hold an inquiry in respect of charges admitted by the employee in the written statement. In view of such clear provision contained in the said Rules itself, when the petitioner himself unconditionally admitted the charge in his written statement dated 12th June 1997, it was no more necessary or obligatory for the respondent to still hold an inquiry. It is not a case in which the punishment is based on the so-called confessional statement dated 5/9/95, but his categorical admission of the guilt unconditionally in the written statement after the service of the charges. Therefore, in this Court's opinion, the order does not stand vitiated merely because no inquiry was held which was not required in such cases in accordance with the scheme of the Rules. The submission of the learned counsel for the petitioner that the petitioner had made the said statement under duress and because of the understanding given to him that if he makes such a statement, no action will be taken against him, does not impress the Court. Firstly, such stand can only be said to be an after thought and cannot be entertained in such matters. Secondly, notwithstanding the fact as to whether the petitioner may wriggle out of such confession made vide his statement dated 5/9/95 or not the fact remains that his categorical admission in the reply to the chargesheet on 12th June 1997, cannot be said to have been made under duress or under any undue influence, as alleged. The earlier statement had been made in the year 1995, the reply to the chargesheet has been filed in June 1997 after the service of the charge sheet dated 16th May 1997 on 28th May 1997 and even at that time, the petitioner had first asked for time on 4th June 1997 to file the reply and thereafter, the reply dated 12/6/97 was filed. The petitioner thus had ample time to think and consider all the aspects of the matter and it can be safely said in the facts and circumstances of the case that the petitioner had admitted the guilt unconditionally as was levelled against him in the charges after due consideration with free mind in the year 1997 and it is this unconditional and categorical admission of the charges in his reply dated 12th June 1997 which obviated the inquiry and which forms the foundation of the order of punishment without holding inquiry.

4. Learned counsel for the petitioner has placed strong reliance on 1986 (1) GLR 569 [Ashwin N. Parekh vs. Union of India and others]. He has particularly referred to para - 8 of this judgement. This Court finds that in the case of Ashwin Parekh (supra), the order was passed on the basis of a statement made before the Ticket Checker, a subsequent communication dated 28th July 1977 and a mercy petition dated 21st November 1977. Thereafter, he was served with the chargesheet on 5th April 1978. It was not a case in which the concerned petitioner had admitted the guilt after the service of the chargesheet and therefore, the Court observed that the admissions or confessions made by the railway servant are merely pieces of evidence which could be relied upon in the course of Departmental Inquiry by the Presiding Officer. At the stage when they could be sought to be relied upon in the inquiry, the delinquent employee could show that the statement had been obtained from him under duress. Thus, this case of Ashwin Parekh (supra) is clearly distinguishable inasmuch as in that case after the service of the chargesheet, the charge had not been admitted and all that was used against him was his admission or confession which had been made prior to the service of the charge sheet which could at the most be taken as pieces of evidence and thus, the concerned petitioner did not get an opportunity to challenge the same in the inquiry as having been made under duress. The cases in which the charge is admitted unconditionally after the services of chargesheet, cannot be compared with those cases in which a confessional statement made prior to the service of the charge sheet, is made the sole basis to obviate the inquiry and to impose the punishment.

5. Learned counsel for the petitioner has also relied upon AIR 1961 SC 1070 [Jagdish Prasad Saxena v/s State of Madhya Bharat]. Para 11 of this judgement shows that, in that case, before the Supreme Court, the specific admission during the course of a previous inquiry had been made use of and on that ground, no inquiry was held after the charge sheet was supplied to him in the inquiry directed against the appellant himself. The Supreme Court has observed that the previous inquiry was not directed against the appellant as such and he was certainly not in position of an accused in the previous inquiry. The result of the previous inquiry was that he had been absolved from the complexity of the commission of the offence and the criticism made against him was that he was slack in his supervision and on that ground, he had been transferred. The Supreme court therefore

took the view that in such circumstances, even if appellant had made some statement which amounted to admission, it was open to doubt whether he could be removed from the service on the strength of said alleged admissions without holding formal inquiry against him as required by the Rules. Not only that, the Supreme court further observed that the statements made by the appellant did not amount to a clear or unambiguous admission of his guilt and therefore, the failure to hold a formal inquiry would certainly constitute a serious infirmity in the order of dismissal passed against him. Thus, this case is also clearly distinguishable from the facts of the present case in which there is a categorical admission of the charge after the service of the charge sheet in the same inquiry and therefore, in the opinion of this Court, these two cases are of no avail to the petitioner in the facts and circumstances of the case.

6. Besides this, it may also be mentioned that these two cases are the cases in which the inquiries were to be held in accordance with the relevant Discipline & Appeal Rules made under the proviso to Article 309 of the Constitution of India with the protection which was available to the civil servants under Article 311 of the Constitution at the relevant time. Here is a case in which the relevant Rules by which the petitioner is governed while working in the United India Insurance Co. clearly provide that it may not be necessary to hold an inquiry in respect of charges admitted by the employee in the written statement. In view of such specific provision in the scheme of Rules itself, the petitioner's grievance that he has been visited with the punishment of removal from service without holding inquiry is wholly misplaced and cannot be entertained.

7. On behalf of the petitioner, it has also been argued that the Assistant General Manager was not competent to remove him from service. The order passed by the appellate authority shows that, according to the General Insurance (Conduct, Discipline & Appeal) Rules, 1975, the appointing authority for the post of Assistant Administrative Officer is the Assistant General Manager and therefore, this contention raised on behalf of the petitioner also fails.

8. This Court also finds from the reading of the two impugned orders that both the orders have been passed after due and active application of mind with an objective approach and the appellate order shows that each and every point raised in the appeal has been dealt with by the appellate authority and the order of

punishment has been found to be in order. It is not at all a case for invoking equitable writ jurisdiction in favour of the petition.

9. This Court does not find any force in this Special Civil Application and the same is hereby dismissed in limine.

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